



July 9, 1999

Mr. Yuri A. Calderon
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR99-1908

Dear Mr. Calderon:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125832.

The Houston/Harris County Sports Committee Foundation d/b/a/ Houston 2012 ("Houston 2012"), which you represent, received a request for, among other items, "any and all documents produced by Jack Kelly in the course of his work on Houston's Olympic bid[.]" You state that except for the submitted document, Houston 2012 has released all responsive information. You claim that the submitted document is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the government's interests when it is involved in certain commercial transactions. For example, section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract. When a governmental body seeks protection as a competitor, however, we have stated that it must be afforded the right to claim the "competitive advantage" aspect of section 552.104 if it meets two criteria. The governmental body must first demonstrate that it has specific marketplace interests. Open Records Decision No. 593 at 4 (1991). Second, a governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. A general

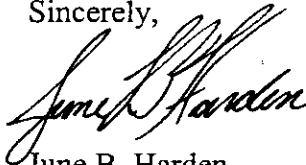
allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *Id.* at 2. Whether release of particular information would harm the legitimate marketplace interests of a governmental body requires a showing of the possibility of some specific harm in a particular competitive situation. *Id.* at 5, 10.

You state that Houston 2012 is the organization approved by the city and county to submit a bid to the United States Olympic Committee ("USOC") for selection as the city to represent the United States in the bid to the International Olympic Committee ("IOC") for the Olympic Games in the year 2012. You also state that Houston 2012 has hired Mr. Jack Kelly as a consultant to assist with the preparation of a strategy and bid to the USOC. You explain that the process for selection of the host city involves a competitive bid process whereby a bid is submitted to the USOC which reviews the bids and selects, based on a competitive analysis, the most qualified city. The USOC then submits this city to the IOC for selection as the host city for the 2012 Olympic Games. You further explain that the submitted "documents are reflective of bid strategy and bid preparation, a disclosure of which would give an advantage to other city competitors seeking to host the 2012 Olympic Games."

Based upon our review of the submitted information and your arguments, we conclude that you have demonstrated actual or potential harm to Houston 2012's interests in this particular competitive situation. Therefore, Houston 2012 may withhold the submitted document under section 552.104.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 125832

Encl. Submitted documents

cc: Mr. Bob Burtman
Houston Press
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Houston, Texas 77002
(w/o enclosures)